



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: Meeting Minutes
King Coal Highway/Buffalo Mountain Surface Mine

Date: March 22, 2013

From: Thomas J. Smith, P.E.
Division Administrator
Charleston, WV

Reply to
Attn of: HDA-WV

To: Meeting Participants (see Attachment A)

Purpose: To provide a status update of the National Environmental Policy Act (NEPA) process and discuss the RAM 145 Alternative. A meeting agenda is provided in Attachment B.

Agency Updates: Tom Smith with the Federal Highway Administration's West Virginia Division (FHWA) opened the meeting and provided a status of the Draft Supplement Environmental Impact Statement (SEIS) for the King Coal Highway Delbarton to Belo Project and the Buffalo Mountain Surface Mine Clean Water Act (CWA) Section 404 Permit Application.

- The Draft SEIS was approved by FHWA, the U.S. Army Corps of Engineers (Corps) and the West Virginia Department of Transportation, Division of Highways (WVDOH) on March 18, 2013.
- The Draft SEIS was filed electronically with the U.S. Environmental Protection Agency (USEPA) via their e-NEPA website on March 19, 2013.

Mr. Smith stated that FHWA was encouraged by the interagency collaboration during the development of the Draft SEIS and was happy to facilitate the discussion of the technical details of the RAM 145 Alternative. He added that the RAM 145 Alternative agenda items reflect those provided by Shawn Garvin of U.S. Environmental Protection Agency (USEPA), Region 3.

Opening statements and status updates were provided by representatives of the Corps, WVDOH, West Virginia Department of Environmental Protection (WVDEP), Consol Energy, Incorporated (CONSOL) and USEPA.

- Lieutenant Colonel William Reding and Ginger Mullins with the Corps Huntington District confirmed the current status of the Draft SEIS and stated that the Corps looks forward to continued interagency cooperation as the NEPA and Clean Water Act Section 404 Permit Application evaluation process continues.
- Greg Bailey with the WVDOH stated he was grateful for federal and state agency collaboration on the development and finalization of the Draft SEIS and that the subject project has very strong community support.
- Tom Clarke with the WVDEP stated that his agency has issued three of the four environmental approvals required for the subject project and they are interested in the final outcome of the FHWA, WVDOH and Corps actions.
- Ed Fanning with CONSOL acknowledged that the environmental process has been long and frustrating; however, CONSOL is looking forward to working with the agencies during the next phase of the NEPA process.

- Randy Pomponio with USEPA Region 3 stated that his agency has provided comments on three Draft SEIS chapters and that Draft SEIS Chapter 4 had still been under review when the SDEIS had been signed. He added that USEPA continues to have serious concerns about the subject project because USEPA believes that less environmentally damaging alternatives are available. The agency's concerns as a cooperating agency on the SEIS led them to hire a contractor, Atkins, to explore minimization alternatives for the project.

Commented [j1]: MWC is a sub contractor

Overview of the RAM 145 Alternative:

- Mr. Pomponio stated that EPA had participated in several meetings to discuss the RAM 145 Alternative. It was clarified however that only one meeting had occurred, on December 4, 2012 in Morgantown, West Virginia where the contractor was in attendance with EPA, FHWA and the Corps. Mr. Smith added that additional information regarding the RAM 145 Alternative was needed to fully evaluate the practicability of the alternative and that WVDOH and CONSOL requested the information; however, USEPA has not responded to this information request. Additionally, CONSOL indicated that USEPA had committed to providing them additional information and a meeting to discuss the alternative information but has not done so prior to today's meeting.
- Jeff Lapp (USEPA Region 3) stated that USEPA was disappointed that the Draft SEIS was issued before this meeting to discuss the RAM 145 Alternative was held; however, he acknowledged that USEPA understood that agency dialogue regarding alternatives for the project would continue before the Final SEIS was issued. It was stated that the objective of the contractor's work was not to design a mine and a highway, but to evaluate potential alternatives and methods for avoidance and minimization; to show that reasonable alternatives may be available for analysis under NEPA.
- John Morgan (MWC) explained that the USEPA contracted his engineering firm through the Atkins contract to review alternatives from a CWA Section 404 alternative minimization perspective and to develop alternatives for two types of projects, a surface mine and a surface mine with a highway. MWC asked USEPA to request CONSOL's geological model for the proposed Buffalo Mountain Surface Mine; however, since USEPA was unable to obtain the geologic model from CONSOL, MWC developed a geologic model based on publically available data. He stated that the results of his model and CONSOL's model were very close in terms of some key metrics.
- Mr. Morgan acknowledged that the AOC+ Policy was developed as a result of the Bragg vs. Robertson litigation and stated he was one of the engineers who developed the AOC+ Model used in design of valley fills for coal mine projects in West Virginia. He also developed the RAM 145 Model that is used to design valley fills for coal mine projects in Kentucky. He explained that while there are differences in the AOC+ and RAM 145 Models, the overall purpose of both models is to evaluate the capacity of a valley fill location and to "optimize" the amount of excess overburden that could be placed within the fill in order to minimize the length of stream that would be permanently filled. Mr. Morgan stated that the USEPA's scope of work requested his company to use available methods and/or models to develop minimization alternatives for the Buffalo Mountain Surface Mine project. Mr. Morgan decided to apply RAM 145 and he stated his professional opinion that the results of the two models would be very similar for the Buffalo Mountain mine.
- Mr. Morgan provided an overview of the information provided in the 13-page document that USEPA provided to the Corps in November 2012 which Jessica Martinsen said is the gist of the more complete still draft document.

Summary of the Technical Discussion of the RAM 145 Alternative:

- MWC stated that CONSOL did not apply the AOC+ Model correctly in that the toe locations were fixed without the minimization process and that all potential hollow fill locations weren't considered in the AOC+ analysis. CONSOL stated that they applied the AOC+ Model as specified by WVDEP's surface coal mining regulations; however, the Buffalo Mountain Surface Mine has an AOC variance which is a deviation from the AOC+ Policy.
- The WVDEP stated that the RAM 145 Alternative may not comply with local land use policies. The

WVDEP and WVDOH were concerned that the USEPA would propose an alternative that would not comply with land use planning policies and regulations in West Virginia. The USEPA stated that the RAM 145 Alternative was developed to satisfy the purpose and need for the project which was a coal mine that would allow for future highway development; secondary development was a secondary issue that was not included in the purpose and need for the project.

- The WVDEP and WVDOH had numerous questions associated with the drainage control plan for the RAM 145 Alternative. Specifically, the WVDEP expressed concerns that the RAM 145 Alternative routed surface water run-off to un-mined watersheds, which is prohibited by West Virginia Surface Coal Mine Regulations. The WVDOH was concerned that the use of the road bed to control surface drainage during coal mining may require additional maintenance when the highway is completed and operational. MWC stated that the drainage control plan for the alternative was conceptual and that additional work would need to be performed.
- CONSOL was concerned that the RAM 145 Alternative did not consider stream impacts associated with temporary sediment control basins. USEPA stated that the stream impacts associated with the RAM 145 Alternative were permanent stream impacts associated with valley fill construction and that the approximately 41,000 feet of stream impacts attributed to Consol's alternative were also permanent stream impacts only. MWC stated that because the RAM 145 Alternative had fewer valleys fills than the SMCRA alternative that the temporary stream impacts would be less.
- The WVDEP stated that the design of some of the valley fills proposed with the RAM 145 Alternative would not meet West Virginia Surface Coal Mine Regulations.
- The WVDOH stated that the RAM 145 Alternative did not provide enough information on the highway alignment to make a determination regarding compliance with current highway design criteria. Specifically, the WVDOH stated that it appeared that the grade was too steep in the northern portion of the project area.
- MWC stated that the roadbed design criteria in the RAM 145 Alternative did not exceed any design criteria (horizontal or vertical) that was outlined in the SMCRA alternative.

Next Steps:

- FHWA offered to facilitate future technical meetings to discuss the practicability of the RAM 145 Alternative. All parties requested additional information including the final technical analysis and detailed mapping from USEPA and MWC.
- USEPA indicated that their contract was coming to completion with MWC and they were unsure at this time if they would be able to distribute the final report and/or participate in further meetings. However, they did commit to providing detailed mapping for the RAM 145 Alternative. They also indicated that if all parties were sincere in exploring the viability of the RAM 145 Alternative for further NEPA consideration and that if additional work from the contractor is desired, there may be a need to identify mechanisms for the other Federal agencies to contribute financial support for the contract.
- Action items identified for the RAM 145 Alternative.
 - Consideration of the RAM 145 and AOC+ Models in relation to setting the toes of the fill
 - Consideration of land use planning in WVDEP's Regulations and WVDOH Policy
 - Clarification of whether permanent or temporary stream impacts were utilized in EPA summary
 - How does the RAM 145 Alternative affect the Surface Water Run-off Analysis (SWROA) and clarify surface water drainage diversions. How would any drainage considerations affect the future highway?
 - Clarification on the cut information associated with the Coalburg coal seam in valley fill 7
 - Consideration of the utility corridor in the post mine land use
 - EPA will evaluate providing higher resolution mapping and highway vertical and horizontal

alignment design information.

- Economic viability associated with relocating valley fills and hauling material during mining
- CONSOL is to investigate if they can provide additional geologic model information to MWC.

Meeting Adjourned.

DRAFT